

The opinion in support of the decision being entered today
is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte GERARDO OROZCO-ABUNDIS

Appeal 2007-2306
Application 10/636,120
Technology Center 2800

Decided: August 21, 2007

Before TONI R. SCHEINER, ERIC GRIMES, and NANCY J. LINCK,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to an image capture device. The Examiner has rejected the claims as anticipated or obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

BACKGROUND

The Specification describes “an image capture device compris[ing] a housing and at least one telescopic hinge operable to couple a lid to the housing” (Specification 1). The Specification states that “the telescopic

nature of [the hinge] enables [the lid] to be raised to accommodate bulky objects” (*id.* at 3).

DISCUSSION

1. CLAIMS

Claims 1-11, 13-15, 17, and 18 are on appeal. Claims 12 and 16 are also pending but have been indicated to be allowable (Office Action mailed November 2, 2005, p. 6).

The claims rejected for anticipation have been argued in two groups (Br. 4-7). The claims within these groups stand or fall together. 37 C.F.R. § 41.37(c)(1)(vii). We will focus on claims 1, 10, and 11, which are representative and read as follows:

1. An image capture device, comprising:
a housing; and
at least one telescopic hinge operable to couple a lid to said housing.
10. The image capture device of claim [1, wherein at least one segment of said at least one telescopic hinge is adapted to be disposed in a recess of said housing, at least another segment of said at least one telescopic hinge is slidably engaged with said at least one segment, and] a third segment of said at least one telescopic hinge is slidably engaged with said at least another segment.
11. An image capture device, comprising:
a lid;
a housing; and
at least two telescopic hinges, each having a plurality of extensible segments, said at least two telescopic hinges pivotally coupling said lid to said housing.

Thus, claims 1 and 11 each refer to a telescopic hinge. As noted by the Examiner, a dictionary definition of “the term ‘telescopic’ . . . [is] ‘extensible or compressible by or as if by the sliding of overlapping sections. . . .’” (Answer 8 (emphasis omitted)). We interpret a telescopic hinge to be a hinge that is extended or compressed by the sliding of overlapping sections.

2. PRIOR ART

The Examiner relies on the following references:

Moore	US 3,832,937	Sep. 3, 1974
Wakeman	US 4,150,896	Apr. 24, 1979

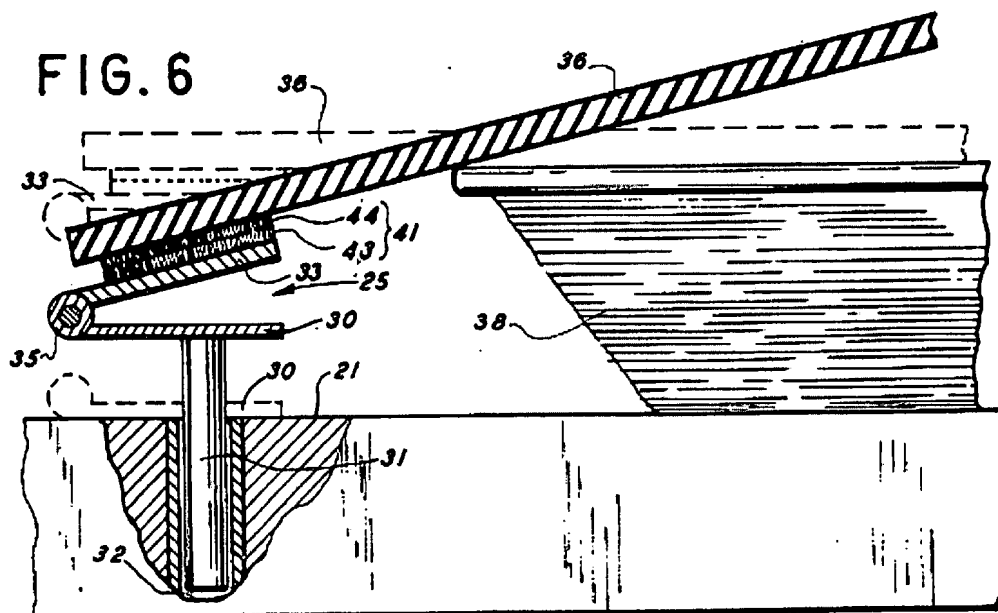
3. ANTICIPATION

Claims 1-9, 11, 13-15, 17, and 18 stand rejected under 35 U.S.C. § 102(b) as anticipated by Wakeman. The Examiner states that “Figures 5 and 6 of Wakeman teach an image capture device 23, comprising a housing 21, and at least one telescopic hinge, shown generally at 35[,] . . . operable to couple a lid 36 to the housing 21” (Answer 4). The Examiner considers the telescopic hinge to include elements 30, 31, 33, and the sleeve bearing in the recess of housing 21 (*id.* at 8). The Examiner finds that “Wakeman teaches cylindrical hinge element 31 that slides inward or outward in an overlapping manner with the second cylindrical member,” that is, the sleeve bearing, and therefore meets the limitation of a telescopic hinge (*id.* at 4).

With regard to claim 11, the Examiner finds that “Figure 5 of Wakeman shows two telescopic hinges, each having a plurality of extensible segments (hinge segment 33 and hinge segment 31 . . .), the two hinges

pivotaly coupling the lid 36 to the housing 21” (Answer 6). The Examiner also finds that “hinge segment 33 is extensible from a horizontal orientation to a vertical orientation” (*id.*).

We agree with the Examiner that claims 1 and 11 are anticipated by Wakeman. Wakeman describes a copying apparatus comprising a housing structure 21, a support member 25 comprising “support arm **30** incorporating at least two depending positioning rods **31**,” and a cover 36 that, through arm 33, is “pivotally mounted to the arm **30** . . . by action of a . . . hinging means **35**” (Wakeman, col. 3, ll. 30-67). “Positioning holes **32** are formed in the housing structure **21**” and “preferably form loose vertical sleeve bearings and slidably receive the telescoping positioning rods **31** for vertical sliding engagement” (*id.* at col. 3, ll. 52-59). Figure 6 of Wakeman is reproduced below:



hinging means 35, together with arms 30 and 33, positioning rod 31, and the sleeve bearing in which it is received, form a telescopic hinge.

Appellant argues that Wakeman “does not disclose . . . ‘at least one telescopic hinge’ coupling a lid to a housing” (Br. 6). In particular, Appellant argues that the “support member 25 of *Wakeman* appears to be formed as a single, rigid body that is not ‘telescopic’” and is therefore “not, by itself, ‘a telescopic hinge’” (*id.* at 5). Appellant also argues that the sleeve bearing “does not form part of the support member 25 of *Wakeman* and, therefore, is not part of any hinge” (Reply Br. 5). Instead, Appellant argues that the sleeve bearing “is clearly part of the housing 21 of Wakeman. In fact, the support member 25 of Wakeman may be completely removed from the housing 21 of Wakeman while the sleeve bearing remains permanently installed in the housing 21.” (*Id.* (emphasis omitted).)

We are not persuaded by this argument. We agree with Appellant that support member 25 is not, by itself, a telescopic hinge. However, we agree with the Examiner that the hinging means 35, together with arms 30 and 33, positioning rod 31, and the sleeve bearing, form a telescopic hinge. In particular, although it appears that the sleeve bearing may be permanently attached to the housing rather than to the positioning rod, we do not agree that this requires that the sleeve bearing be considered part of the housing and, therefore, not part of the telescopic hinge.

With regard to claim 11, Appellant additionally argues that Wakeman’s support member 25 does not include “a plurality of extensible segments” (Br. 7). Specifically, Appellant argues that “the sleeve bearing of *Wakeman* is not connected to the support member 25 of *Wakeman* and

cannot be considered as an ‘extensible segment’ of any ‘telescopic hinge’” (Reply Br. 6).

We are not persuaded by this argument. First, for the reasons discussed above, we do not agree that the sleeve bearing cannot be considered part of the telescopic hinge. Second, the Examiner is not relying on the sleeve bearing for being an extensible segment, instead identifying positioning rod 31 and arm 33 as the extensible segments (Answer 6) (“a plurality of extensible segments (hinge segment 33 and hinge segment 31”).

We conclude that the Examiner has set forth a prima facie case that claims 1 and 11 are anticipated by Wakeman, which Appellant has not rebutted. We therefore affirm the rejection of claims 1 and 11 under 35 U.S.C. § 102. Claims 2-9 fall with claim 1 and claims 13-15, 17, and 18 fall with claim 11.

4. OBVIOUSNESS

Claim 10 stands rejected under 35 U.S.C. § 103 as obvious over Wakeman in view of Moore. The Examiner relies on Wakeman for teaching “all the claimed subject matter except for a third segment in the telescopic hinge” (Answer 7). The Examiner relies on Moore for teaching “a telescopic device similar to that taught by Wakeman” having “a third segment slidably engaged with another segment” (*id.*). The Examiner concludes that “it would have been obvious to provide a third segment as taught by Moore et al., in the apparatus of Wakeman, in order to increase the expansion capabilities of the telescopic hinge,” specifically “without adding to the overall dimension (height/thickness/etc.) of the housing” (*id.* at 7 and 11).

We conclude that the Examiner has set forth a prima facie case of obviousness. Wakeman is discussed above. Moore describes a lift cylinder comprising “first, second, third and fourth vertically oriented cylinder members **11, 12, 13 and 14** of decreasing cross-sectional area telescopically arranged within each other” (Moore, col. 3, ll. 41-46). Based on the teaching in Moore of four telescopically arranged members, we agree with the Examiner that it would have been obvious to modify Wakeman’s telescopic hinge to include a third telescopically arranged segment, in order to increase the expansion capabilities of the hinge.

Appellant argues that “there is no motivation or suggestion to combine reference teachings as proposed by the Examiner” (Br. 7). Specifically, Appellant argues that Wakeman’s “support member 25 . . . is not ‘telescopic’” and “does not include any slidable segments” (*id.* at 8). This argument is addressed above.

Appellant also argues that Wakeman “appears to teach away from the proposed combination” (Br. 8). Specifically, Appellant argues:

[T]he support member 25 of *Wakeman* includes a post (positioning rod 31) that is disposed into the opening formed in the housing 21 of the *Wakeman* device. . . . [P]roviding any extension in the *Wakeman* device as proposed by the Examiner appears unnecessary and would add additional cost to the *Wakeman* device at least because the proposed “increase[ed] . . . expansion capabilities” as suggested by the Examiner appears to be easily obtainable in the *Wakeman* device by increasing the length of the post (positioning rod 31).

(*Id.*)

We are not persuaded by this argument. First, Appellant has provided no evidence that it would be more cost-effective to increase the length of the

post and the size of the corresponding positioning hole in the housing, compared to adding another extensible segment. More importantly, even if increasing the length of the post would be more cost-effective, we do not agree that Wakeman teaches away from the Examiner's combination.

"[T]he fact that the two disclosed apparatus would not be combined by businessmen for economic reasons is not the same as saying that it could not be done because skilled persons in the art felt that there was some technological incompatibility that prevented this combination. Only the latter fact is telling on the issue of nonobviousness." *Orthopedic Equip. Co. v. United States*, 702 F.2d 1005, 1013, 217 USPQ 193, 200 (Fed. Cir. 1983).

In addition, Appellant argues that "there does not appear to be any suggestion in the cited references that any increase in movement of the support member 25 beyond that illustrated or provided by the *Wakeman* system is needed that would necessitate the combination of *Moore* therewith" (Reply Br. 7). Thus, Appellant concludes that the "Examiner is clearly using hindsight reconstruction to piece together purported teachings of the references to arrive at [claim 10]" (*id.*).

We are not persuaded by this argument. As recently indicated by the Supreme Court, "any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed." *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007). "[E]vidence of a motivation to combine need *not* be found in the prior art references themselves, but rather may be found in 'the knowledge of one of ordinary skill in the art or, in some cases, from the nature of the problem to be

solved.”” *Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1366, 80 USPQ2d 1641, 1649 (Fed. Cir. 2006) (emphasis in original, quoting *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999)). In this case, we agree with the Examiner that one of ordinary skill in the art would have been motivated to combine Wakeman with Moore “to increase the expansion capabilities of the telescopic hinge.” (Answer 7.)

We conclude that the Examiner has set forth a prima facie case that claim 10 would have been obvious over Wakeman in view of Moore, which Appellant has not rebutted. We therefore affirm the rejection of claim 10 under 35 U.S.C. § 103.

SUMMARY

The Examiner’s position is supported by the preponderance of the evidence of record. We therefore affirm the rejection of claims 1-9, 11, 13-15, 17, and 18 under 35 U.S.C. § 102 and the rejection of claim 10 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

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